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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	10/564,774
Filing Date	June 19, 2006
First Named Inventor	Joachim Zimmerman
Art Unit	3735
Examiner Name	Christine D. Hopkins
Attorney Docket Number	06-003-JZ

Total Number of Pages in This Submission

ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
<div>Remarks</div> <div>Appeal Brief</div>		

2008 MAR 20 PM 12:31
BOARD OF PATENT APPEALS & INTERFERENCES

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

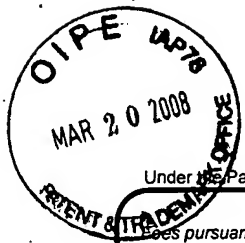
Firm Name	Lambert & Associates		
Signature			
Printed name	Adam J. Bruno		
Date	3/17/2008	Reg. No.	58,390

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Signature			
Typed or printed name	Adam J. Bruno	Date	3/17/2008

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FEE TRANSMITTAL

For FY 2008

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 255.00

Complete if Known

Application Number	10/564,774
Filing Date	June 19, 2006
First Named Inventor	Joachim Zimmerman
Examiner Name	Christine D. Hopkins
Art Unit	3735
Attorney Docket No.	06-003-JZ

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☐ Deposit Account Deposit Account Number: _____ Deposit Account Name: _____

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
☐ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☐ Credit any overpayments

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	310	155	510	255	210	105	_____
Design	210	105	100	50	130	65	_____
Plant	210	105	310	155	160	80	_____
Reissue	310	155	510	255	620	310	_____
Provisional	210	105	0	0	0	0	_____

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	210	105
Multiple dependent claims	370	185
Total Claims	Extra Claims	Fee (\$)
_____ - 20 or HP = _____ x _____ = _____		
HP = highest number of total claims paid for, if greater than 20.		
Indep. Claims	Extra Claims	Fee (\$)
_____ - 3 or HP = _____ x _____ = _____		
HP = highest number of independent claims paid for, if greater than 3.		

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$260 (\$130 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____ - 100 = _____ / 50 = _____ (round up to a whole number) x _____ = _____				

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount) Fees Paid (\$)
Other (e.g., late filing surcharge): Filing of Appeal Brief \$255.00

SUBMITTED BY		Registration No.	Telephone
Signature		(Attorney/Agent) 58,390	617-720-0091
Name (Print/Type)	Adam J. Bruno		Date 3/17/2008

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Appl. No. : 10/564,774
Applicant : Joachim Zimmerman
Filed : 05/27/2005
TC/A.U. : 3735
Examiner : Hopkins, Christine, D
Docket No. : 06-003-JZ

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BOARD OF PATENT
APPEALS & INTERFERENCES
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APPEAL BRIEF

Sir or Madam:

Please find enclosed an Appeal Brief in support of the above-referenced application.

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REAL PARTY IN INTEREST

The real party in interest is Mr. Joachim Zimmerman, as inventor and applicant.

RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences known to appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1 has been finally rejected and is the subject of this appeal.

STATUS OF AMENDMENTS

No amendments have been filed subsequent to final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1

Claim 1 defines a Medical apparatus (US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 1) for the treatment of living beings (US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 1) using magnetic field therapy (US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 6) having a pulsating magnetic field (US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 1) characterized in that an element, which radiates a pulsating magnetic field (US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 1 & 5) is inserted into a vagina of a woman or into the anal region of a living being (US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 5) the element

being flexible (US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 5) and comprising an inert tube (US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 5) into which magnetized or magnetisable balls are introduced in an attractive alignment (US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 5) or magnetized or magnetisable rings are arranged in adjacent rows in opposite alignment (US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 5) and which tube is shaped to form a ring (US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 5).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Objection to Specification 35 U.S.C. §132(a)

The Examiner objected to the specification filed in an amendment under 35 U.S.C. §132(a) because it introduces new matter into the disclosure. Specifically, the Examiner notes 35 U.S.C. §132(a) which states that no amendment shall introduce new matter into the disclosure of the invention. The Examiner alleges the added material which is not supported by the original disclosure is as follows: at lines 3 and 5 of claim 1, the specification does not support the medical apparatus for the treatment of living beings having a pulsating magnetic field, nor an element which radiates a pulsating magnetic field.

Claims Rejections 35 U.S.C. §112, First Paragraph

The Examiner has rejected Claim 1 under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement. The Examiner alleges that the claim contains subject matter which was not described in the specification in such a way

as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Furthermore, the Examiner alleges, regarding Claim 1 at lines 3 and 5; the specification does not support the medical apparatus for the treatment of living being having a pulsating magnetic field, nor an element which radiates a pulsating magnetic field.

Claims Rejections 35 U.S.C. §102(b) in light of Ansari

The Examiner has rejected Claims 1 under 35 U.S.C. 102(b) as being anticipated by Ansari (U.S. Patent No. 3,805,777). The Examiner alleges that Ansari teaches an intrauterine device comprising a ring embedded with magnets. Furthermore, the Examiner states, regarding claim 1, Ansari discloses a device 10, in the form of a ring, also made of an inert, elastically deformable material. In addition, the Examiner alleges that Ansari contains magnetic rings segments, or “magnetized balls,” 18 that are introduced into the ring 10 and are arranged in opposite alignment (col. 3, lines 26-45 and Figs. 1-2). Lastly, the Examiner states the device is capable of being placed within the vagina or uterine cavity (col. 3, lines 53-55).

ARGUMENT

Objection Under 35 U.S.C. §132(a)

In paragraph 2 of the October 12, 2007 Office Action, the Examiner objected to the specification filed in an amendment under 35 U.S.C. §132(a) because it introduces new matter into the disclosure. Specifically, the Examiner notes 35 U.S.C. §132(a) which states that no amendment shall introduce new matter into the disclosure of the invention. The Examiner alleges the added material which is not supported by the original

disclosure is as follows: at lines 3 and 5 of claim 1, the specification does not support the medical apparatus for the treatment of living beings having a pulsating magnetic field, nor an element which radiates a pulsating magnetic field.

Response

In response to the Examiner's rejection, applicant respectfully traverses on the ground that support in the specification can be found for claim 1, as amended, specifically for the above-referenced phrase.

There is no *in haec verba* requirement for newly amended claims in order to meet the written description requirement under 35 U.S.C. 112, first paragraph, rather, these claim limitations may be supported in the specification through implicit or inherent disclosure. MPEP §2163 I.B. Furthermore, the standard for determining compliance with 35 U.S.C. §112 first paragraph, requires a factual inquiry as to whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as claimed. MPEP §2163.02. Again, the subject matter of the claim need not be literally described in order for the disclosure to satisfy the description requirement. *Id.*

Briefly, pending claim 1 recites a medical apparatus for the treatment of living beings, using magnetic field therapy having a pulsating magnetic field, characterized in that an element, which radiates a pulsating magnetic field is inserted into a vagina of a woman or into the anal region of a living being, the element being flexible and comprising an inert tube, into which magnetized or magnetisable balls are introduced in an attractive alignment or magnetized or magnetisable rings are arranged in adjacent rows in opposite alignment, and which tube is shaped to form a ring.

As illustrated below, applicant respectfully asserts that support for amended claim 1 exists in several locations in the specification. Initially, applicant directs the Board to the following excerpts which state:

The invention relates to a medical apparatus, for the treatment of living beings, having a magnetic field, more especially having a **pulsating magnetic field**.

US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 1

The basic object of the present invention is to broaden the use of **magnetic field therapy**.

US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 4

This object is achieved when an element, which **radiates a magnetic field**, is inserted into a vagina of a woman or into an anal region of a living being, the element being flexible and comprising an inert tube, in which magnetized or magnetisable balls are introduced in an attractive alignment, or magnetized or magnetisable rings are arranged in adjacent rows in opposite alignment, and which tube is shaped to form a ring.

US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 5

Applicant respectfully asserts that the above-referenced portions of the specification provide proper support for amended claim 1, especially in light of the above-mentioned standard, created by MPEP §2163 I.B. Applicant ergo asserts that the present invention, as described above, illustrates a medical apparatus having a pulsating magnetic field, characterized by an element which radiates a pulsating magnetic field. The present invention allows for the treatment of living beings through the use of magnetic field therapy in conjunction with magnetized or magnetisable balls are introduced.

Furthermore, applicant respectfully states that the specification does teach a medical apparatus for the treatment of living beings, first having a pulsating magnetic

field, and second having an element which radiates a pulsating magnetic field. With respect to the medical apparatus having a pulsating magnetic field, the specification clearly describes this feature in ¶ 1 as shown above. Curiously, although applicant included this language in original claim 1, the Examiner never raised a §112 first paragraph rejection in the office action of April 26, 2007 regarding this language. Moreover, as shown above, the specification states the apparatus includes a magnetic field, and then narrows the invention further to states a pulsating magnetic field is incorporated with the instant invention.

In addition, with respect to the second aspect of an element which radiates a pulsating magnetic field, as shown above the specification clearly details the instant invention contains not only a magnetic field, but a pulsating magnetic field. As such, the element contained within the medical apparatus, may radiate either a magnetic field or a pulsating magnetic field as disclosed in the specification. Furthermore, it would be inherent from the specification to one skilled in the relevant art that if the apparatus utilizes a pulsating magnetic field, then obviously the element which radiates the magnetic field, would utilize a pulsating field as disclosed in the specification.

In view of the applicant's arguments specifically illustrating support for amended claim 1 in the specification, applicant respectfully requests the Board to remove this objection.

Rejection Under 35 U.S.C. §112, First Paragraph, Written Description

In paragraph 4 of the October 12, 2007 Office Action, the Examiner rejected Claim 1 under 35 U.S.C. §112, first paragraph as failing to comply with the written description

requirement. The Examiner alleges that the claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Furthermore, the Examiner allegedly states regarding Claim 1 at lines 3 and 5; the specification does not support the medical apparatus for the treatment of living being having a pulsating magnetic field, nor an element which radiates a pulsating magnetic field.

Response

In response to the Examiner's rejection, applicant respectfully traverses on the ground that support in the specification can be found for claim 1, as amended, specifically for the above-referenced phrase.

There is no *in haec verba* requirement for newly amended claims in order to meet the written description requirement under 35 U.S.C. 112, first paragraph, rather, these claim limitations may be supported in the specification through implicit or inherent disclosure. MPEP §2163 I.B. Furthermore, the standard for determining compliance with 35 U.S.C. §112 first paragraph, requires a factual inquiry as to whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as claimed. MPEP §2163.02. Again, the subject matter of the claim need not be literally described in order for the disclosure to satisfy the description requirement. *Id.*

Briefly, pending claim 1 recites a medical apparatus for the treatment of living beings, using magnetic field therapy having a pulsating magnetic field, characterized in that an element, which radiates a pulsating magnetic field is inserted into a vagina of a

woman or into the anal region of a living being, the element being flexible and comprising an inert tube, into which magnetized or magnetisable balls are introduced in an attractive alignment or magnetized or magnetisable rings are arranged in adjacent rows in opposite alignment, and which tube is shaped to form a ring.

As illustrated below, applicant respectfully asserts that support for amended claim 1 exists in several locations in the specification. Initially, applicant directs the Board to the following excerpts which state:

The invention relates to a medical apparatus, for the treatment of living beings, having a magnetic field, more especially having a **pulsating magnetic field**.

US Pat. Pub. No. 2007/0021645 A1, Page 1 ¶ 1

The basic object of the present invention is to broaden the use of **magnetic field therapy**.

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Applicant respectfully asserts that the above-referenced portions of the specification provide proper support for amended claim 1, especially in light of the above-mentioned standard, created by MPEP §2163 I.B. Applicant ergo asserts that the present invention, as described above, illustrates a medical apparatus having a pulsating magnetic field, characterized by an element which radiates a pulsating magnetic field. The present invention allows for the treatment of living beings through the use of

magnetic field therapy in conjunction with magnetized or magnetisable balls are introduced.

Furthermore, applicant respectfully states that the specification does teach a medical apparatus for the treatment of living beings, first having a pulsating magnetic field, and second having an element which radiates a pulsating magnetic field. With respect to the medical apparatus having a pulsating magnetic field, the specification clearly describes this feature in ¶ 1 as shown above. Curiously, although applicant included this language in original claim 1, the Examiner never raised a §112 first paragraph rejection in the office action of April 26, 2007 regarding this language. Moreover, as shown above, the specification states the apparatus includes a magnetic field, and then narrows the invention further to states a pulsating magnetic field is incorporated with the instant invention.

In addition, with respect to the second aspect of an element which radiates a pulsating magnetic field, as shown above the specification clearly details the instant invention contains not only a magnetic field, but a pulsating magnetic field. As such, the element contained within the medical apparatus, may radiate either a magnetic field or a pulsating magnetic field as disclosed in the specification. Furthermore, it would be inherent from the specification to one skilled in the relevant art that if the apparatus utilizes a pulsating magnetic field, then obviously the element which radiates the magnetic field, would utilize a pulsating field as disclosed in the specification.

In view of the applicant's arguments specifically illustrating support for amended claim 1 in the specification, applicant respectfully requests the Board to remove this ground of rejection.

Rejection Under 35 U.S.C. 102(b)

In paragraph 5 of the October 12, 2007 Office Action, the Examiner rejected claim 1 under 35 U.S.C. 102(b) as being anticipated by Ansari (U.S. Patent No. 3,805,777). The Examiner alleges that Ansari teaches an intrauterine device comprising a ring embedded with magnets. Furthermore, the Examiner states, regarding claim 1, Ansari discloses a device 10, in the form of a ring, also made of an inert, elastically deformable material. In addition, the Examiner alleges that Ansari contains magnetic rings segments, or “magnetized balls,” 18 that are introduced into the ring 10 and are arranged in opposite alignment (col. 3, lines 26-45 and Figs. 1-2). Lastly, the Examiner states the device is capable of being placed within the vagina or uterine cavity (col. 3, lines 53-55).

Response

In response to the Examiner’s rejection, applicant respectfully traverses on the grounds that U.S. Patent No. 3,805,777 to Ansari does not teach each and every limitation of applicant’s invention.

First, Ansari does not teach a medical apparatus for the treatment of living beings which incorporates magnetic field therapy that allows for a pulsating magnetic field to exert an influence upon the body of the living being internally, rather than having the magnetic field traverse through the outer skin. Ansari specifically teaches a device solely for the use of conception prevention and wherein the device does not provide any therapeutic benefits to the individual user, as opposed to the instant invention.

Thus, where the instant invention is directed to providing relief to women for hypogastrium complaints, period pains and premenstrual syndromes and to men for prostate complaints and erection malfunctions using magnetic field therapy, Ansari fails

to provide these features and is so structurally differing as not to be disposed to provide such features.

Additionally, while the instant invention utilizes a magnetic field under operating conditions, Ansari is only an intrauterine device that contains magnetic elements solely for the purpose of inserting and removing the device from the uterine cavity, in connection with a corresponding tool. Thus, again, whereas Ansari is designed to prevent problems commonly associated with such an interuterine device for conception prevention as infection, bleeding and discomfort by removing attached tails or strings that are commonly found in the device's prior art; the instant invention features magnetic elements specifically for the therapy of painful conditions, and these magnetic elements do NOT serve for insertion and removal, as in Ansari.

Therefore, the magnetic elements in Ansari function merely in conjunction with a tool for the removal and insertion of the interuterine device.

Furthermore, regarding the rejection of amended claim 1 under 35 USC §102(b), Ansari does not disclose **balls** that are introduced into the tube **in an attractive alignment**. Moreover, Ansari does not disclose **rings** that are arranged in the tube **in an opposite alignment**. Conversely, the examiner refers to col. 3, line 26 – 45 in Ansari to support this position, but there is only mention that:

“The device 10 is in the form of a ring and is preferably made of an inert plastic material. In the body 16 of the device there is molded a plurality of magnetic ring segments commonly designated at 18, there being four such ring segments shown, equally spaced circumferentially around the ring. The segments can be made of any suitable magnetic material, such as stainless steel. It will be understood that the magnetic segments could be more or less in number, and differently spaced within the device”.

There is absolutely no hint for the ring being arranged in an opposite alignment or balls arranged in an attractive alignment. Again, this is another significant structural and functional difference between the instant invention and that disclosed in Ansari. In the instant invention, the alignment of the balls/rings is responsible for the magnetic field being generated through the alignment, thus being responsible for the corresponding treatment of living beings. As mentioned in the specification of the instant invention, the arrangement of the rings in an opposite alignment produces an intense field of energy on the body, while when arranged in an attractive alignment produce a calming, the instant invention produces a harmonising effect. Both of these features are not disclosed or even mentioned remotely in Ansari.

Curiously, the examiner put forth the notion that Ansari teaches and discloses a medical apparatus for the treatment of living being which incorporates magnetic field therapy that allows for a pulsating magnetic field as in the instant invention. Rather, the entire disclosure of Ansari is directed towards the insertion and removing of an intrauterine device which initially has been inserted into the vagina for conception prevention and not for the therapy of painful condition.

In view of the applicant's remarks and amendments to the claims, applicant respectfully requests the Board to remove this ground of rejection.

Reconsideration and further examination is respectfully requested. The Commissioner is hereby authorized to charge any additional fees, which may be required for this amendment, or credit any overpayment to Deposit Account No. 12-0115.

Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action,

it is respectfully requested that the Examiner telephone Gary E. Lambert, Applicant's Attorney at (617) 720-0091 so that such issues may be resolved as expeditiously as possible.

For these stated herein and in view of the above remarks and arguments, Applicant asserts that this application is now considered to be in condition for allowance and such action is earnestly solicited. Applicant respectfully contends that each rejected claim is patentable. Therefore, reversal of all rejections is courteously solicited.

Respectfully Submitted,

Date

Adam J. Bruno
Attorney for Applicant
Reg. No. 58,390

Adam J. Bruno
Lambert & Associates
92 State Street
Boston, MA 02109
Tel. (617) 720-0091

CLAIMS APPENDIX

1. (Once Amended) Medical apparatus for the treatment of living beings, using magnetic field therapy having a pulsating magnetic field, characterised in that an element, which radiates a pulsating magnetic field, is inserted into a vagina of a woman or into an anal region or a living being, the element being flexible and comprising an inert tube, into which magnetized or magnetizable balls are introduced in an attractive alignment, or magnetized or magnetizable rings are arranged in adjacent rows in opposite alignment, and which tube is shaped to form a ring.

EVIDENCE APPENDIX

The following is the evidence submitted by the examiner and relied upon by appellant in the appeal.

3,805,777 Ansari

RELATED PROCEEDINGS APPENDIX

There are no decisions rendered by a court of the Board in any proceeding as noted in the section titled: RELATED APPEALS AND INTERFERENCES.